

The stipulations as specifically set forth in the Award of the Administrative Law Judge are herein adopted by the Appeals Board.

ISSUES

(1) Whether or not claimant suffered personal injury by accident arising out of and in the course of his employment on June 22, 1992.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having review the entire evidentiary record filed herein including the stipulations of the parties, the Appeals Board makes the following findings of fact and conclusions of law:

The Appeals Board finds claimant has failed in his burden of proving an accidental injury arising out of and in the course of his employment on June 22, 1992.

Claimant, a laborer for the respondent, opened cow stomachs with a knife. Claimant testified that while performing this task various items would spray out of the stomach striking him in the face and body. Claimant alleges on June 22, 1992 while opening a stomach he was struck on the eye with a piece of meat, wood, bone or rock. Claimant went on to testify that prior to this incident he had suffered no eye problems and that all of his eye problems started with this particular incident.

The record indicates claimant went to the nurses station at the respondent's dispensary on several occasions before the date of accident with complaints of matter in his eye. The first time claimant visited the dispensary was on May 29, 1992. Claimant also filed a claim against the respondent for an injury suffered to his neck. While being evaluated for the neck injury on June 9, 1992 claimant complained to the doctor of a foreign object in his eye. The medical report indicated claimant's eye had been irritated for about two weeks. On June 22 while being evaluated again for the neck injury claimant again mentioned the problem with his eye. The medical record indicates the doctor speculated this might possibly be an allergic reaction to some substance. There was no mention in the June 22nd medical report of any traumatic injury to claimant's eye.

Claimant was examined and treated by Dr. Michael P. Varenhorst, an ophthalmologist. Dr. Varenhorst diagnosed a retinal vein occlusion which he initially described on June 24, 1992 as being old. By old Dr. Varenhorst testified he meant from a couple of weeks to a couple of months old. Dr. Varenhorst also stated the vein occlusion was a pre-existing condition which would not have been caused by material being in the eye. In order for trauma to the eye to have caused this injury it would have had to have been a severe direct hit in the eye.

The Appeals Board read the medical reports of Dr. Varenhorst and the letters from claimant's attorney with interest. As the correspondence to the doctor became more explicit regarding what was necessary in order for the doctor's medical bills to be paid, the medical reports of Dr. Varenhorst appeared to alter regarding causation. The Appeals Board finds the original unsolicited opinions of Dr. Varenhorst indicating claimant's eye condition was not related to his employment and further indicating that the condition

diagnosed on June 24, 1992 had been present for a minimum of two weeks to two months to be more credible medical evidence than the subsequent opinions solicited by claimant's attorney.

In proceedings under the Workers Compensation Act, the burden of proof shall be on the claimant to establish the claimant's right to an award of compensation by proving the various conditions in which the claimant's right depends. K.S.A 44-501(a). This must be established by a preponderance of the credible evidence. Box v. Cessna Aircraft Company, 236 Kan. 237, 689 P.2d 871 (1984).

The Appeals finds the preponderance of the credible evidence supports a denial of benefits in the matter.

AWARD

WHEREFORE, it is the finding, decision and order of the Appeals Board that the Award of Administrative Law Judge Thomas F. Richardson dated June 30, 1994, is affirmed in all respects and that the claimant, Augustin Arias shall be and is denied any award against National Beef Packing Company and Lumbermen's Underwriting Alliance for an accidental injury alleged to have occurred on June 22, 1992.

Fees and expenses of administration of the Kansas Workers Compensation Act are assessed against the Respondent and Insurance Carrier to be paid direct as follows:

Susan Maier	
Preliminary Hearing	\$164.00
Tri State Reporting Services	
Transcript of Regular Hearing	\$121.75
Ireland Court Reporting	
Deposition of Dr. Varenhorst	\$238.70

IT IS SO ORDERED.

Dated this _____ day of October, 1994.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

cc:

Lawrence M. Gurney, Attorney at Law, 1861 N. Rock Road, #320, Wichita, KS 67206
Kerry E. McQueen, Attorney at Law, PO Box 2619, Liberal, KS 67905-2619
Thomas F. Richardson, Administrative Law Judge
George Gomez, Director